

61-62.96

Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program

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Subparts A - I [Repealed]

CAIR NO_x ANNUAL TRADING PROGRAM

Subpart AA - “South Carolina CAIR NO_x Annual Trading Program General Provisions”

The provisions of 40 Code of Federal Regulations (CFR) Part 96 Subpart AA, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart AA			
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Subpart BB - “CAIR Designated Representative for CAIR NO_x Sources”

The provisions of 40 CFR Part 96 Subpart BB, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart BB			
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Subpart CC - “Permits”

The provisions of 40 CFR Part 96 Subpart CC, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart CC			
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Subpart DD - [Reserved]

Subpart EE - “CAIR NO_x Allowance Allocations”

Section 96.140 South Carolina Trading Budget.

The South Carolina trading budget for annual allocations of CAIR NO_x allowances for the control periods in 2009 through 2014 is 32,662 tons, and in 2015 and thereafter is 27,219 tons.

Section 96.141 Timing Requirements for CAIR NO_x Allowance Allocations.

(a) By April 30, 2007, the Department will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with Section 96.142(a) and (b), for the control periods in 2009, 2010, 2011, and 2012.

(b) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with Sections 96.142(a) and (b), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(c) By October 31, 2009, and October 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x allowance allocations for new units from the new unit set-aside account, in a format prescribed by the Administrator and in accordance with Section 96.142(a), (c), and (d) for the control period in the year of the applicable deadline for submission under this paragraph.

Section 96.142 CAIR NO_x Allowance Allocations.

(a)(1) The baseline heat input (in million metric British thermal units (mmBtu)) used with respect to CAIR NO_x allowance allocations for each CAIR NO_x unit will be:

(i) The allowances allocated for the years 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years 2002 through 2005 for the control periods for which the CAIR NO_x annual allowance allocation is being calculated, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(i)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(ii) For a CAIR NO_x allowance allocation under Section 96.141(b), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven, and eight years before the first year of the control periods for which the CAIR NO_x annual allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(ii)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(2) A unit's control period heat input, and a unit's status as coal-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR 75, to the extent the unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR 75 for the year. Heat input data under 40 CFR 75 will be obtained from the Administrator.

(b)(1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x allowances equal 97 percent for a control of the tons of NO_x emissions in the State trading budget under Section 96.140 (except as provided in paragraph (d) of this section).

(2) The Department will allocate CAIR NO_x allowances to each CAIR NO_x unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x unit to the total amount of baseline heat input of all such CAIR NO_x units in the State and rounding to the nearest whole allowance as appropriate.

(c) New Unit Set-aside: For each control period in 2009 and thereafter, the Department will allocate CAIR NO_x allowances to CAIR NO_x units in the State that are not allocated CAIR NO_x allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_x allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x allowances equal three percent for a control period of the amount of tons of NO_x emissions in the State trading budget under Section 96.140.

(2) The CAIR designated representative of such a CAIR NO_x unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x allowances under paragraph (b) of this section. A separate CAIR NO_x allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before May 1 of such control period.

(3) In a CAIR NO_x allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x allowances in an amount not exceeding the CAIR NO_x unit's total tons of NO_x emissions during the calendar year immediately before such control period in accordance with Subpart HH of this regulation.

(4) The Department will review each CAIR NO_x allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after May 1 of the control period, the Department will determine the sum of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x allowances (if any) allocated for the control period to the CAIR NO_x unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO_x unit that was allocated CAIR NO_x allowances under paragraph (b) of this section an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided 97 percent for a control period the amount of tons of NO_x emissions in the State trading budget under Section 96.140, and rounded to the nearest whole allowance as appropriate.

Section 96.143 Compliance Supplement Pool.

(a) In addition to the CAIR NO_x allowances allocated under Section 96.142, the Department may allocate for the control period in 2009 up to 2,600 tons of CAIR NO_x allowances to CAIR NO_x units in the State. These allowances are referred to as the Compliance Supplement Pool.

(b) For any CAIR NO_x unit in the State that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR

NO_x allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

(1) The owners and operators of such CAIR NO_x units shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with Part 96 subpart HH of this regulation in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO_x unit shall submit to the Department by May 1, 2009, a request, in a format specified by the Department, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any state or federal emissions limitation applicable during such years, determined in accordance with Part 96 Subpart HH of this regulation.

(c) For any CAIR NO_x unit in the State whose compliance with the CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:

(1) The CAIR designated representative of such CAIR NO_x unit shall submit to the Department by May 1, 2009, a request, in a format specified by the Department, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with the CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

(d) The Department will review each request under paragraph (b) or (c) of this section submitted by May 1, 2009, and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in the State and covered by such request as follows:

(1) Upon receipt of each such request, the Department will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of paragraph (b) or (c) of this section.

(2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Department will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under paragraph (d)(1) of this section).

(3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_x allowances than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Department will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate.

Unit's allocation = Unit's adjusted allocation × (State's compliance supplement pool ÷ Total adjusted allocations for all units)

Where:

“Unit's allocation” is the amount of CAIR NO_x allowances allocated to the unit from the State's compliance supplement pool.

“Unit's adjusted allocation” is the amount of CAIR NO_x allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

“State's compliance supplement pool” is the amount of CAIR NO_x allowances in the State's compliance supplement pool.

“Total adjusted allocations for all units” is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

(4) By November 30, 2009, the Department will determine, and submit to the Administrator, the allocations under paragraph (d)(2) or (3) of this section.

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

Subpart FF - “CAIR NO_x Allowance Tracking System”

The provisions of 40 CFR Part 96 Subpart FF, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart FF			
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

The following State modifications are being made in R. 61-62.96.153 to section 96.153 of 70 FR 25161:

(a) By September 30, 2007, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority in accordance with Section 96.141(a), for the control periods in 2009, 2010, 2011, and 2012.

(b) By December 1, 2009, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority in accordance with Section 96.141(b), for the control period in 2013, 2014, 2015, and 2016.

(c) By December 1, 2013, and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority in accordance with Section 96.141(b), for the control period in the fourth, fifth, sixth, and seventh years after the year of the applicable deadline for recordation under this paragraph.

Subpart GG - "CAIR NO_x Allowance Transfers"

The provisions of 40 CFR Part 96 Subpart GG, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart GG			
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Subpart HH - "Monitoring and Reporting"

The provisions of 40 CFR Part 96 Subpart HH, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

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Subpart II - "CAIR NO_x Opt-in Units"

The provisions of 40 CFR Part 96 Subpart II, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

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CAIR SO₂ TRADING PROGRAM

Subpart AAA - “CAIR SO₂ Trading Program General Provisions”

The provisions of 40 CFR Part 96 Subpart AAA, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

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Subpart BBB - “CAIR Designated Representative for CAIR SO₂ Sources”

The provisions of 40 CFR Part 96 Subpart BBB, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

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Subpart CCC - “Permits”

The provisions of 40 CFR Part 96 Subpart CCC, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

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Subpart DDD [Reserved]

Subpart EEE [Reserved]

Subpart FFF - “CAIR SO₂ Allowance Tracking System”

The provisions of 40 CFR Part 96 Subpart FFF, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart FFF			
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Subpart GGG - “CAIR SO₂ Allowance Transfers”

The provisions of 40 CFR Part 96 Subpart GGG, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart GGG			
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Subpart HHH - “Monitoring and Reporting”

The provisions of 40 CFR Part 96 Subpart HHH, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart HHH			
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Subpart III - “CAIR SO₂ Opt-in Units”

The provisions of 40 CFR Part 96 Subpart III, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart III			
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CAIR NO_x OZONE SEASON TRADING PROGRAM

Subpart AAAA - “CAIR NO_x Ozone Season Trading Program General Provisions”

The provisions of 40 CFR Part 96 Subpart AAAA, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart AAAA			
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Revision	Vol. 71	December 13, 2006	[71 FR 74792]
Revision	Vol. 72	October 19, 2007	[72 FR 59190]

The following State modifications to definitions are being made in R. 61-62.96.302 to section 96.302 of 70 FR 25161:

“Commence commercial operation” - (a) For all units “commence commercial operation” means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in Section 96.305 and Section 96.384(h).

(i) For a unit that is a CAIR NO_x Ozone Season unit under Section 96.304 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO_x Ozone Season unit under Section 96.304 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (for example, repowered), such date shall remain the replaced unit’s date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in Section 96.305, for a unit that is not a CAIR NO_x Ozone Season unit under Section 96.304 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under Section 96.304.

(3) Notwithstanding paragraphs (1) and (2) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

"Electric Generating Unit" or "EGU" – any unit subject to this regulation as specified in Section 96.304 (a)(1)(i), (a)(2), and (b).

"Non-Electric Generating Unit" or "Non-EGU" – any unit subject to this regulation as specified in Section 96.304 (a)(1)(ii).

The following definitions are revised in Section 96.302 Definitions:

"Commence operation" - (a) For all units "commence operation" means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in Section 96.384(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (for example, repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in Section 96.384(h).

(b) Notwithstanding paragraph (a) of this definition and solely for purposes of 40 CFR 96, Subpart HHHH, for a unit that is not a CAIR NO_x Ozone Season unit under Section 96.304(a)(1)(ii) on the later of November 15, 1990, or the date the unit commences operation as defined in paragraph (a)(1), (2), or (3) of this definition and that subsequently becomes such a CAIR NO_x Ozone Season unit, the unit's date of commencement of operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under Section 96.304(a)(1)(ii).

(1) For a unit with a date of commencement of operation as defined in paragraph (b) of this definition that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(2) For a unit with a date of commencement of operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (for example, repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (a) or (b) of this definition as appropriate.

"Fossil-fuel-fired" - (a) For a unit subject to 96.304 (a)(1)(i), (a)(2) or (b), "fossil-fuel-fired" means with regard to a unit, combusting any amount of fossil fuel in any calendar year.

(b) For a unit subject to 96.304 (a)(1)(ii) it means with regard to a unit:

(1) For units that commenced operation before January 1, 1996, the combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995.

The following modifications are being made in R.61-62.96.302 to section 96.302 of 70 FR 25162:

(2) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that during such year, the unit shall be "fossil-fuel-fired" as of the date upon which the unit begins combusting fossil fuel.

(3) Notwithstanding the definition set forth in (b)(1) above, a unit shall be deemed fossil fuel- fired if on any year after January 1, 2001, the fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis.

"Unit" - (a) For a unit subject to Section 96.304 (a)(1)(i), (a)(2), or (b), "unit" means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

(b) For a unit subject to Section 96.304 (a)(1)(ii), "unit" means a fossil-fuel-fired stationary boiler, combustion turbine, or combined cycle system.

Section 96.304 Applicability.

The following State modifications are being made in R. 61-62.96.304 to section 96.304 of 70 FR 25161:

(a) Except as provided in paragraph (b) of this section,

(1) The following units in the State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this subpart and Subparts BBBB through HHHH of this part:

(i) EGU Applicability: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel- fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatts electric (MWe) producing electricity for sale.

(ii) Non-EGU Applicability:

(A) Any unit that is not a unit under paragraph (a)(1)(i) of this section and at any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or

(B) Any unit that is not a unit under paragraph (a)(1)(i) of this section and that has a maximum design heat input greater than 250 mmBTU/hr.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1)(i) of this section, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in paragraph (a)(1)(i) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) This section applies only to units that are subject to Section 96.304(a)(1)(i) or (a)(2). The units in a state that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_x Ozone Season units:

(1)(i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1)(i) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990, or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 megawatt hours (MWh), whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1)(i) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1)(i) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

Subpart BBBB - “CAIR Designated Representative for CAIR NO_x Ozone Season Sources”

The provisions of 40 CFR Part 96 Subpart BBBB, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart BBBB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart CCCC - “Permits”

The provisions of 40 CFR Part 96 Subpart CCCC, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart CCCC			
Federal Register Citation	Volume	Date	Notice
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart DDDD [Reserved]

Subpart EEEE - “CAIR NO_x Ozone Season Allowance Allocations”

Section 96.340 South Carolina trading budget.

(a) For NO_x budget units defined as EGUs, the South Carolina trading budget for annual allocations of CAIR NO_x Ozone Season allowances for the control periods in 2009 through 2014 is 15,249 tons and in 2015 and thereafter is 12,707 tons.

(b) For NO_x budget units defined as non-EGUs, the South Carolina trading budget for annual allocations of CAIR NO_x Ozone Season allowances for 2009 and thereafter is 3,479 tons.

Section 96.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations.

(a) For NO_x Budget units defined as EGUs, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations as follows:

(1) By April 30, 2007, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with Section 96.342(a) and (b), for the control periods in 2009, 2010, 2011, and 2012.

(2) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with Section 96.342(a) and (b), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(3) By July 31, 2009, and July 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations for the new unit set-aside, in a format prescribed by the Administrator and in accordance with Section 96.342(c) for the control period in the year of the applicable deadline for submission under this paragraph.

(b) For NO_x Budget units defined as non-EGUs, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations as follows:

(1)(i) By April 30, 2007, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator, for the control periods in 2009, 2010, 2011 and 2012.

(ii) The CAIR NO_x Ozone Season allowance allocations for 2009, 2010, and 2011 will be determined in accordance with Section 96.342(e).

(iii) The CAIR NO_x Ozone Season allowance allocations for 2012 will be determined in accordance with Section 96.342(e).

(2) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with Sections 96.342(e) and (f), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

(3) By July 31, 2009, and July 31 of each year thereafter, the Department will submit to the Administrator the CAIR NO_x Ozone Season new unit set-aside allowance allocations, in a format

prescribed by the Administrator and in accordance with Section 96.342 (g) for the control period in the year of the applicable deadline for submission under this paragraph.

Section 96.342 CAIR NO_x Ozone Season Allowance Allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations for EGUs for each CAIR NO_x Ozone Season unit under Section 96.341(a) will be:

(i) The allowances for the control periods 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years 2002 through 2005 for the control periods for which the CAIR NO_x Ozone Season allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(i)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(ii) For a CAIR NO_x Ozone Season allowance allocation under Section 96.341(a)(2), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven, and eight years before the first year of the control period for which the CAIR NO_x Ozone Season allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 1.0 (100 percent); or

(B) If the unit is not subject to paragraph (a)(1)(ii)(A) of this section, the unit's control period heat input for such year is multiplied by 0.60 (60 percent).

(2) A unit's control period heat input, and a unit's status as coal-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR 75, to the extent the unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR 75 for the year. Heat input data under 40 CFR 75 will be obtained from the Administrator.

(b)(1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 97 percent of the tons of NO_x emissions in the State EGU trading budget for a control period under Section 96.340 (except as provided in paragraph (d) of this section).

(2) The Department will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount

of CAIR NO_x Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(3) CAIR NO_x allocations for the 2009 ozone season can be used for the excess penalty deductions for the 2008 control period of the NO_x SIP Call Trading Program that this Regulation replaced on April 30, 2009.

(c) EGU New Unit Set-aside - For each control period in 2009 and thereafter, the Department will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in the State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input, but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 3 percent for a control period of the amount of tons of NO_x emissions in the State EGU trading budget under Section 96.340(a).

(2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x Ozone Season allowances, starting with the latter of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x Ozone Season allowances are sought must be submitted on or before February 1 before such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions, in accordance with Subpart HHHH of this regulation, during the control period immediately before such control period.

(4) The Department will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Department will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Department will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 97 percent for a control period of the amount of tons of NO_x emissions in the State EGU trading budget under Section 96.340, and rounded to the nearest whole allowance as appropriate.

(e) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations for non-EGUs for each CAIR NO_x Ozone Season unit under Section 96.341(b) will be:

(1) For a CAIR NO_x Ozone Season allowance allocation under Section 96.341(b)(1), the allowances will be determined as follows:

(i) For the control period for the years 2009, 2010 and 2011, the allocations will be determined using the unit's baseline heat input equal to the average of the two highest amounts of the unit's heat input for the control period in the years 1999, 2000, 2001, 2002, and 2003, or, if a unit only operated during one of these control periods, the heat input during the single year of operation.

(ii) For the control period for 2012, the allocations will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years in 2004 and 2005.

(2) For a CAIR NO_x Ozone Season allowance allocation under Section 96.341(b)(2), the allowances will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years that are five, six, seven, and eight years before the first year of the control periods for which the CAIR NO_x Ozone Season allowance allocation is being calculated.

(3) The unit's total heat input for the control period in each year specified under paragraph (e) will be determined in accordance with 40 CFR 75 to the extent the unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR 75 for the year. Heat input data under 40 CFR 75 will be obtained from the Administrator.

(f)(1) For each control period in 2009 and thereafter, the Department will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under paragraph (e) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 97 percent for a control period of the tons of NO_x emissions in the State Non-EGU trading budget under Section 96.340(b).

(2) The Department will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (f)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (f)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(g) Non-EGU New Unit Set-aside - For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in the State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input, but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Department will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 3 percent for a control period of the amount of tons of NO_x emissions in the State Non-EGU trading budget under section 96.340(b).

(2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (h) of this section. The CAIR NO_x Ozone Season allowance allocation request must be submitted on or before February 1 before the first control period for which the CAIR NO_x Ozone Season allowances are requested and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (g)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions, in accordance with Subpart HHHH of this regulation, during the control period immediately before such control period.

(4) The Department will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (g)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of paragraphs (g)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Department will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (g)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (g)(4)(ii) of this section, then the Department will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (g)(4)(ii) of this section.

(iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (g)(4)(i) of this section, then the Department will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (g)(4)(ii) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (g)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (g)(4)(i) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Department will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(h) If, after completion of the procedures under paragraph (g)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the Department will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (f) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (f) of this section, divided by 97 percent for a control period of the amount of tons of NO_x emissions in the State Non-EGU trading budget under Section 96.340(b), and rounded to the nearest whole allowance as appropriate.

Subpart FFFF - "CAIR NOX Ozone Season Allowance Tracking System"

The provisions of 40 CFR Part 96 Subpart FFFF, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart FFFF			
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]

Section 96.353(c) is modified to read:

The following State modifications are being made in R. 61-62.96.353 to section 96.353 of 70 FR 25161:

(a) By September 30, 2007, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with Section 96.341(a)(1) and (b)(1), for the control periods in 2009, 2010, 2011, and 2012.

(b) By December 1, 2009, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with Section 96.341(a)(2) and (b)(2), for the control period in 2013, 2014, 2015, and 2016.

(c) By December 1, 2010 and December 1 of each fourth year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with Section 96.341(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.

(d) By September 1, 2009, and September 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with Sections 96.341(a)(3) and (b)(3), for the control period in the year of the applicable deadline for recordation under this paragraph.

Subpart GGGG - “CAIR NO_x Ozone Season Allowance Transfers”

The provisions of 40 CFR Part 96 Subpart GGGG, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart GGGG			
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]

Subpart HHHH - “Monitoring and Reporting”

The provisions of 40 CFR Part 96 Subpart HHHH, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart HHHH			
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Subpart IIII - “CAIR NO_x Ozone Season Opt-in Units”

The provisions of 40 CFR Part 96 Subpart IIII, as originally published in the Federal Register and as subsequently amended upon publication in the Federal Register as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 96 Subpart IIII			
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Revision	Vol. 71	April 28, 2006	[71 FR 25304]
Revision	Vol. 71	December 13, 2006	[71 FR 74792]